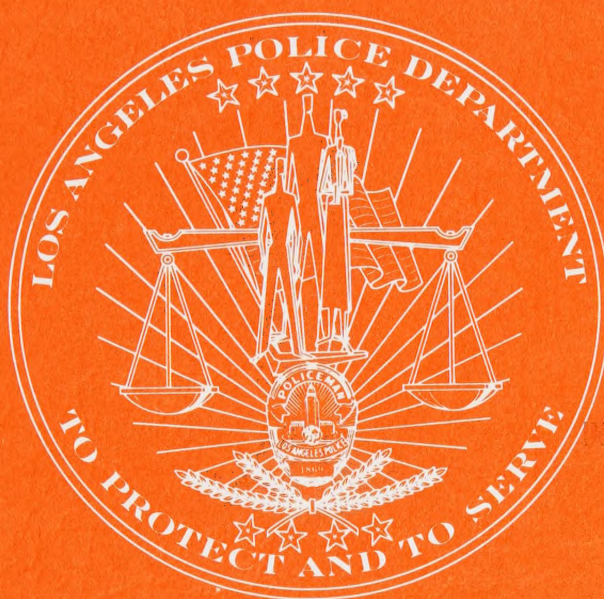


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THE REPORT OF THE BOARD OF POLICE COMMISSIONERS
CONCERNING THE SHOOTING OF EULIA LOVE
AND THE USE OF DEADLY FORCE




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PART II - INVESTIGATION AND ADJUDICATION
OF USE OF FORCE INCIDENTS



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THE REPORT OF THE BOARD OF POLICE COMMISSIONERS
CONCERNING THE SHOOTING OF EULIA LOVE
AND THE USE OF DEADLY FORCE

PART II - INVESTIGATION AND ADJUDICATION OF
USE OF FORCE INCIDENTS

BOARD OF POLICE COMMISSIONERS

Stephen Reinhardt, President

James G. Fisk, Vice-President

Salvador Montenegro, Member

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Samuel L. Williams, Member

October, 1979

PART TWO:

INVESTIGATION AND ADJUDICATION OF
USE OF FORCE INCIDENTS

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INTRODUCTION AND SUMMARY

The Police Commission has recently conducted a series of public hearings for the purpose of examining various issues relating to officer-involved shootings and other serious physical confrontations between officers and civilians. Perhaps the most controversial of these issues is how officer-involved shootings and other cases involving death or serious injury to civilians should be investigated and adjudicated. While the recent tragic shooting of Eulia Love has received an unprecedented amount of public attention, it is important to bear in mind that the Police Department is regularly faced with the necessity of determining the facts and assessing responsibility in officer-involved shootings. For many years each officer-involved shooting incident has been the subject of review and analysis by the Department's Shooting Review Board for the purpose of determining compliance with or violation of Department policies. It is a concern with the procedure followed in these cases generally, rather than an examination of a single incident, which leads us to the conclusions set forth in this Section of the Report.

The Police Commission has, for a long time, been considering informally what improvements might be made in the present system or whether, as some persons have suggested, a totally different system should be adopted. Several months ago, the City Council asked the Commission to report publicly on certain aspects of this subject.

In the meantime, many individual citizens and citizen groups have renewed their demands that an independent police review board be established, and a drive to place an initiative measure on the ballot which would amend the City Charter and establish such an independent agency has been announced.

We do not believe that the present procedures ensure a thorough, impartial review of officer-involved shootings and death or serious injury cases in the manner contemplated by the City Charter; nor do we believe that there can or will be full public confidence in the results unless those procedures are changed. On the other hand, we do not believe that an independent police review board offers a practical or effective solution to the problem.

In this Section of our Report we set forth a procedure for investigating and adjudicating officer-involved shootings and death or serious injury cases which we believe ensures fair and just decisions and which, if implemented properly, will, over a period of time, earn the confidence of both the officers of this Department and the members of the public. That procedure will, as the City Charter contemplates, ensure civilian supervision and control over the operations of the Los Angeles Police Department in a critical area of public concern and at the same time preserve those basic elements of the present system which place in the Department the necessary authority to implement its policies and administer discipline in an orderly and effective manner.

While there has been a variety of proposals relating to independent police review boards, none adequately resolves the complex problems inherent in devising a system which ensures a complete, thorough, and impartial examination of facts, law, and Department policies by a governmental body which (1) is fully familiar with the policies, procedures and operations of a police department, (2) has the capacity to investigate and adjudicate the issues properly, (3) has the authority to implement its decisions effectively by causing necessary changes in Department policy and by overseeing the administration of appropriate discipline, (4) is a non-political entity and functions in a non-political and objective manner, and (5) can gain the necessary confidence and cooperation of the members of the Department and the public.

On the other hand, the Commission form of government, mandated by our City Charter, offers a reasonable and practical solution to these problems. That solution is for the Police Commission to assume responsibility for the final determination of officer-involved shooting incidents and death or serious injury cases. We do so willingly and with a recognition of our obligations, as head of the Department, to both the officers and the citizens involved.

We are persuaded by our own experience as citizens and Commissioners and by The Reports of the President's Commission on Law Enforcement and the Administration of Justice and the National Advisory Commission on Civil Disorders and the Causes and Prevention

of Violence that a system of Police Commission Review, if properly designed and implemented, will provide an effective and impartial method of investigating and adjudicating officer-involved shootings and death or serious injury cases, and that the adoption by the Commission of such a system makes an independent police review board neither necessary nor desirable. At the least we believe that a fair test should be afforded the new procedures described in this Report before serious consideration is given to the use of any alternative system.

We should add that while we believe the changes we are instituting are necessary, we also believe that the system utilized in the past has produced fair and proper results in the vast majority of cases. The Los Angeles Police Department has led the nation in its efforts to develop procedures for thorough and objective internal review of officer-involved shooting incidents. Its voluntary actions have served as a model for other law enforcement agencies. The new system we are adopting has been developed with the full cooperation of the Chief of Police and his staff. Many of the concepts contained in this report originated directly from the Chief.

Nevertheless, the checks and balances inherent in Commission review are essential. While we are confident that in most instances it will be unnecessary for the Commission to exercise the full range of authority provided it under the new procedure, the mechanism we are establishing will ensure that in those cases where further

action is required such action will be taken in a manner which will best protect the public interest.

The principal new procedures we are adopting in this Section of our Report are as follows:

(1) The Police Commission will assume direct responsibility for the adjudication of all officer-involved shooting incidents and will make the final determination in all such cases. However it will do so only after receiving and considering a report from the Chief of Police which will provide a full review of the incident and will contain the Chief's proposed findings and recommendations.

(The Chief of Police's authority to impose discipline will remain unchanged.)

(2) In cases where the Police Commission, after evaluating the report submitted by the Chief of Police, feels that an independent review is required, the Commission will conduct that review and issue the final report.

(3) When the Commission decides that an independent review is necessary, it may (a) employ Special Counsel to assist it in conducting that review or (b) use the services of a

former Superior Court judge (to be selected from a panel of such former judges) as a Special Hearing Officer to conduct any further investigation which may be necessary and to submit proposed findings and recommendations to the Commission.

(4) The Commission will, when necessary, exercise its subpoena powers in officer-involved shooting cases so that testimony may be adduced from non-officer witnesses.

(5) The final report in officer-involved shooting cases will set forth and analyze fully all facts, policies and procedures as well as all findings and recommendations, and will be made available to the public.

(6) All interviews with officers will be taped in the same manner as interviews with civilian witnesses. The Department is directed to interview officer and civilian witnesses in a manner that is consistent with proper and accepted methods of investigation.

(7) The composition and function of the Shooting Review Board will be expanded for the purpose of ensuring proper fact-finding and the preparation of full and complete reports that will include all relevant investigative data.

The report will serve as a basis for policy changes and improved training methods. The Board will be renamed the Use of Force Review Board.

(8) All cases involving death or serious injury to a person in custody of the Department, or resulting from contact with police officers, will be adjudicated in the same manner as officer-involved shooting incidents.

(9) The Commission will employ permanent independent staff as well as such additional professional personnel as may, from time to time, be required. This independent staff will assist the Commission in the performance of its responsibility to assure that a full, fair, and impartial investigation has been conducted in every case.

II.

INVESTIGATION OF OFFICER-INVOLVED SHOOTINGS

A. Present Procedure

Investigation of an officer-involved shooting commences immediately after the incident occurs. Officers at the scene of the incident request a supervisor to respond to the location and Detective Headquarters Division at Parker Center is immediately notified. When no gunshot wound has been inflicted, investigative responsibility is assumed by the supervisor responding to the location. When a gunshot wound has been inflicted, Detective Headquarters Division immediately dispatches the Officer-Involved Shooting Team ("OIS") and thereafter notifies designated officials of the Department, Police Commission, and District Attorney's Office.

OIS, consisting of eight investigators and one supervisor, is a specialized unit in the Department's Robbery-Homicide Division. In addition to its responsibilities in the area of officer-involved shootings, OIS presently conducts investigations in cases involving the death of persons while in the custody of Department personnel. In all cases investigated by OIS, the unit's concern is with the circumstances leading to death or injury rather than with the investigation of criminal activity or the apprehension of suspects.

As a formal organizational matter OIS reports through Operations-Headquarters Bureau. In practice, however, OIS consults regularly and directly both with the Chief of Police and with the (Assistant Chief) Director, Office of Operations, in connection with officer-involved shooting incidents resulting in gunshot wounds. With respect to incidents encompassed by its jurisdiction OIS is principally responsible for the preparation of news releases relating to incidents it investigates.

The OIS supervisor and a team of two assigned investigators respond to each officer-involved shooting incident resulting in injury or death to either an officer or a citizen. Also responding to the location of a shooting incident are the involved employee's division (Captain) and bureau (Deputy Chief or Commander) commanding officers. Prior to the arrival of OIS investigators divisional supervisors have primary responsibility for providing proper care and assistance to the injured, and for securing the scene of the shooting which duties include preserving all potential evidence and attempting to locate all potential witnesses. After their arrival OIS personnel assume complete responsibility for securing the situation and for directing subsequent investigation and interrogation. OIS oversees interviews with percipient citizen witnesses. As a routine matter citizens are interviewed separately and their statements are tape-recorded.

Police officers who are witnesses to or participate in shooting incidents are escorted from the scene to the division station to await questioning by an OIS investigator.¹ For the most part, officer interviews have not been conducted separately in the past nor have tape recordings been made of these interviews. Detailed written notes are made and retained by the investigating OIS officer.²

Upon completion of its investigation of incidents involving the infliction of gunshot wounds, the OIS team forwards a confidential report, in narrative form, to the Shooting Review Board. Where a weapon has been discharged but no gunshot wound has resulted, the supervisor of the involved employee responsible for the investigation submits a report through organizational channels to the Shooting Review Board.

¹Department Manual Section 3/796.25 ("Assignment of Officer Inflicting Gunshot Wound") provides:

"The concerned commanding officer shall remove from field duty an officer who inflicts a gunshot wound on any person. An officer shall not be returned to field duty except by his commanding officer, with the concurrence of the concerned group or bureau commanding officer."

²Retention of investigative notes made by OIS investigators represent a policy change effected by the Department after recent Police Commission hearings pertaining to the matter.

B. Future Procedure

It is the responsibility of those charged with investigating officer-involved shootings to explore and record the facts in a manner that results in a complete and reliable presentation of all relevant circumstances to the reviewing authorities. At present the Shooting Review Board undertakes an independent examination of evidence only in those infrequent cases where clarification of the investigative report is necessary. On those occasions the Board examines physical evidence and listens to the tapes of witness interviews. Since interviews with officer participants have not been tape-recorded the Board has not normally had access to their verbatim statements.

In the future, the statements of involved officers will be tape-recorded routinely by the OIS team. Further, the Commission has instructed the Department to interview officer and citizen witnesses in a manner that is consistent with proper and accepted methods of investigation.

The revised procedure will permit reviewing authorities to more closely assess the credibility of various witnesses to an incident and will furnish it with an increased capacity for verification.

III.

ADJUDICATION BY REVIEW BOARD

A. Present Procedure

The jurisdiction of the Shooting Review Board presently extends to incidents in which an officer discharges a firearm. This includes all situations where the officer fires a weapon--deliberately or accidentally--whether or not a gunshot wound is inflicted.

The Shooting Review Board has a dual purpose. Its primary mandate concerns evaluation of officer-involved shooting incidents from the standpoint of Department policies. Secondly, the Board identifies alternative tactical approaches to various police problems and, when warranted, recommends review of tactics with the officers involved.

The timing of submission of investigative reports is controlled by the OIS team, Robbery-Homicide Division, in cases where gunshot wounds are inflicted. In incidents involving "misses", the division supervisor assigned to investigate is required to submit a report within one working day from the time of the shooting. Once the investigative report concerning a shooting incident is forwarded to the Board Coordinator, the Shooting Review Board is convened as early as possible consistent with the schedules of its members.

Board review of a shooting incident is conducted informally in round table fashion. The involved officer's commanding officer (Captain) presents the factual circumstances of the incident in summary form based upon the investigative report submitted to the Board. Questions are raised and disposed of in the course of the presentation and subsequent deliberations. The incident is discussed by the Board in its entirety and alternative tactics are examined. Various "resource" officers present are consulted to clarify tactics or other details of the incident under review. Further investigation may be conducted to ascertain factual circumstances not covered by the initial report.

In all cases, the Board may request the data (tapes and notes of witness interviews and so forth) underlying the investigative report but has not done so as a matter of common practice. It requests additional evidence and investigative data when there is a demonstrated need not satisfied by the investigative report. The Chief of Police has vested authority in the Board to summon the involved officer to testify as well as any other Department personnel in the possession of information material for proper evaluation of the matter. The involved officer, at his request, may voluntarily appear before the Board to testify on his own behalf. In practice, it has been uncommon for an officer involved in a shooting incident to either choose to or be compelled to appear before the Board.

After general Board discussion, an informal poll of voting members is taken and the particular incident is classified pursuant to the categories set forth in the Shooting Review Board Report (LAPD Form 01.67.0) Following the meeting, the Coordinator drafts the Board's majority report for review by the Board Chairman and, if necessary, the draft is circulated for review by concurring members. Minority reports may be prepared by the single dissenting voting member.

The present Shooting Review Board Report provides for a recommended classification of the incident by the Board as (1) in policy; or (2) in policy but fails to meet Department standards; (3) accidental; or (4) out of policy. These categories were established January 15, 1969 by the then Chief of Police Thomas Reddin. The Board's recommendation regarding the official departmental response to the incident can involve no action or referral to the division commanding officer for (a) training, (b) review of negligence in handling firearm, (c) appropriate administrative disapproval, and (d) review of (inappropriate) tactics.

Administrative responsibility for the review of matters within the jurisdiction of the Shooting Review Board rests with the Director (Assistant Chief), Office of Special Services. The Shooting Review Board Report is transmitted to that Office where a "final classification of shooting" is made. The matter is then referred to the division commanding officer (captain) of the

involved employee to recommend an appropriate administrative response consistent with the classification of the shooting by the Director, Office of Special Services. These possible responses, include (1) none; (2) training - firearms, tactics, attitudinal; (3) divisional admonishment; (4) warning; (5) official reprimand; (6) voluntary relinquishment of days off; (7) suspension; and (8) Board of Rights.

The recommendation of the involved officer's commanding officer is returned to the Director, Office of Special Services, concerning appropriate action to be taken in response to the classification of the incident.

Any penalty involving suspension or discharge requires the direct participation of the Chief of Police who may initiate Board of Rights procedures to that end.³

³The Board of Rights is the fact-finding and adjudicatory body mandated by the City Charter (Section 202) in cases in which the Department seeks to either suspend or remove an officer. By Charter, the Chief of Police may assess a penalty of up to 30 days suspension without referring the matter to a Board of Rights, but,

Continuation Footnote 3

in all such cases the officer has the right to demand a hearing before the Board. The Chief of Police may under no circumstances impose a penalty of discharge or suspension in excess of 30 days, but must refer all cases where such discipline may be appropriate to a Board of Rights.

B. Future Procedure

1. Jurisdiction and Function of the Shooting Review Board

With regard to incidents involving the discharge of a firearm, the Commission has concluded that jurisdiction of the Shooting Review Board is plenary and need not be redefined.

However, the jurisdiction of the Shooting Review Board (to be redesignated the Use of Force Review Board) will be expanded to include a review of incidents resulting in death or serious physical injury to persons in the custody of, or as a result of, contact with Department personnel. Such situations require review for the same reasons as an officer-involved shooting. In-custody deaths are presently investigated by the unit (OIS Team, Robbery-Homicide Division) which has investigative responsibility for officer-involved shootings. In the future, investigative reports concerning all death and serious injury cases will be forwarded to the Use of Force Review Board. Board inquiry and the subsequent report will follow procedures parallel to those used in shooting incidents.

The Use of Force Review Board will be responsible for making factual determinations concerning the circumstances of an incident within its jurisdiction. To perform this fact-finding function, the Board will examine all relevant investigative data and when necessary examine involved officers and other available witnesses.

In addition, the Use of Force Review Board will monitor the quality of supervision reflected in cases before it. The Board will

continue its current practice of evaluating elements of supervisory conduct in light of specific cases. Additionally, it will direct its attention to broader patterns of supervisory conduct, thus assuring that the responsibilities incumbent on supervisors in the Department are fulfilled. For this reason each Review Board report will identify all supervisors (sergeant through captain) of the involved employee.

2. Composition of the Shooting Review Board

At present the Board is chaired by the Commanding Officer (Deputy Chief), Personnel and Training Bureau, Office of Administrative Services, or his representative. The second member is the Assistant to the Director (Commander), Office of Operations, or his representative. The third member is the involved employee's bureau commanding officer (Deputy Chief), or his representative.⁴ Also present at the Board are an Academy training officer and the

⁴Special Order No. 43 (December 1, 1978) provides that "(w)hen the involved employee is assigned to Personnel and Training Bureau, the Director, Office of Operations, shall appoint an ad hoc member to the Board of the rank of Deputy Chief, to fill the otherwise vacant position of the 'involved employee's bureau commanding officer.'" That Special Order also provides that in the event the Assistant to the Director, Office of Operations, is unable to participate as a member of the Shooting Review Board, the Director, Office of Operations, may appoint a substitute member from among Operations Deputy Chiefs.

involved employee's division commander. While these officers do not vote, they assist the Board in measuring a particular incident against Department standards.

The composition of the Use of Force Review Board will be expanded to include five, rather than the present three, voting members. The Commanding Officer (Deputy Chief), Bureau of Special Investigation, Office of Special Services, will, in the future, serve as the fourth member. A line officer, drawn on a rotating basis from a designated panel, will serve as the Board's fifth member.

Expansion of the composition of the Review Board in this manner is deemed advisable on the following grounds. First, the increased formality of review proceedings and emphasis on the Board's fact-finding function suggest broader membership on the Board to ensure coverage of all pertinent points at the staff level. Second, the voting presence of a peer officer will provide additional perspective prior to consideration of the matter by executive authorities.

In addition, the Police Commission will periodically designate one or more of its members, or a member of its staff, to observe and report upon the proceedings of the Review Board. Such monitoring will enable the Commission to assure the public that the Review Board is functioning openly, fairly and in a manner best calculated to determine the facts.

3. Nature of Recommended Findings Made by Use of Force Review Board

As was apparent at the Commission hearing on this matter, the categories or "findings" providing for the assessment of officer-involved shootings by the Review Board are unclear and incomplete. In part, this is traceable to continued reliance upon classifications established in 1969, despite subsequent changes in the formulation of the Department's Use of Firearms Policy.

The principal difficulties with the present classifications are:

--The classifications fails to provide for separate assessments regarding the drawing and exhibiting of a firearm and the actual discharge of the weapon.

--The classification "in policy but fails to meet Department standards" is unclear. The definition⁵ of this

⁵"In policy but fails to meet Department standards" is defined by Administrative Order No. 1 as follows: "Use of deadly force was lawful but fell short of Department standards and judgment, indicating a need for expression of administrative disapproval and may include some form of disciplinary action."

classification purports to pertain to the use of deadly force itself, i.e., the firing of the weapon. However, since the Department standards governing the use of deadly force are themselves defined by the shooting policy, a conclusion that a particular incident is "in policy but not up to standard" is, at best, analytically confusing and, at worst, productive of inconsistent results.

As applied by the Shooting Review Board, the classification is sometimes used to assess tactical decisions made by officers in incidents that culminate in the firing of a weapon. Even here, however, there is a difference of opinion regarding the class of tactics which is properly within the jurisdiction of the shooting review process. Some limit the evaluation to tactics employed in the course of the actual shooting, such as whether the officer has fired from a satisfactory position in such a way as to minimize the possibility of harm to innocent bystanders. Others extend the assessment to all tactical decisions made by the officer leading up to, as well as in the course of, the shooting incident.

--A third related problem with the current categories is that they do not permit or require formal evaluation of the entire pattern of officer conduct in incidents of officer-involved shootings. Specifically, the present

categories do not provide for those cases where the officer has placed himself in a position of an "in policy" use of deadly force by reason of a deficient tactical approach to a police problem.

In the future, the Use of Force Review Board will evaluate, in explicit and fact-finding fashion, each aspect of an officer-involved shooting. This will, at a minimum, include separate evaluations of the drawing and exhibiting of a firearm, the firing of the weapon, tactics employed prior to drawing and discharge of the weapon, and tactics employed during and following the discharge of the weapon.

The classification "in policy but fails to meet Department standards" will no longer be used to assess officer performance. In each review of an officer-involved shooting incident and in every case of in-custody death or serious injury, the Board will evaluate the incident in terms of four separate categories and make recommended findings as follows:

Tactics

A review of tactics utilized by the officer(s) before, during and following the use of force will be conducted to assess each officer's judgment, training and compliance with

Department policies and standards. Recommendations may include no action or referral to the division commanding officer for training and/or appropriate discipline.

Drawing/Reholstering of Weapon

In incidents involving the use of a weapon, a recommended finding of in policy or out of policy will be made with respect to the initial decision to draw the weapon. Based upon its findings, the Board will then either recommend no action or referral to the division commanding officer for training and/or appropriate discipline.

Use of Force

A recommended finding of in policy, out of policy or accidental will be made with respect to decisions to use force. The Board will then recommend either no action or referral to the division commanding officer for training and/or appropriate discipline.

Additional Considerations

Events and actions involved in any particular incident which are viewed by the Board as suggesting the need for changes in Department policy or otherwise appear to require training and/or discipline will be commented upon and referred to the concerned departmental entity for appropriate action.

4. Nature and Purposes of Report by Review Board

The Report prepared by the Use of Force Review Board will be submitted to the Chief of Police, with a copy to the Commission, and will be drafted to fulfill three distinct purposes.

First, the Report will summarize the investigation, including a list of the names of all witnesses interviewed and a description of all physical evidence. It will also summarize any actions taken by the Board in the course of its examination in addition to the review of the initial investigative report, including the calling of citizen and/or officer witnesses, the review of taped witness and officer statements and any additional investigation regarding specific factual issues.

Second, the Report will discuss in complete detail the reasons for and the analysis underlying the Board's various findings and recommendations regarding the incident under review.

Third, when appropriate, the Report will identify changes in Department policies, tactical approaches, training procedures suggested by the review of particular incidents. The discussion will be in a form which lends itself to incorporation into Academy as well as officer roll-call training materials.

In the past, the Shooting Review Board Report has sometimes not been formal or detailed enough to fulfill each of the foregoing purposes. Requiring the Board to discuss and explain its findings will remedy the situation to an important extent. Equally important is the examination by the Board of tactical decisions made in the circumstances leading up to an officer-involved shooting. By measuring these decisions against Department policy, the Report prepared by the Use of Force Review Board will serve as the source of clearly articulated Department "standards". This will assist both the Department and the Police Commission in ensuring review of officer-involved shooting incidents in a manner which is uniform and consistent, which has direct application to departmental practice and which can earn widespread community acceptance.

5. Use of Force Review Coordinator

The Shooting Review Board Coordinator is currently a staff person in Personnel and Training Bureau. It is the responsibility of the Board Coordinator to monitor the progress of all officer-involved shooting investigations and Board meetings, to consolidate information involving officer-involved shootings for entry into the computerized officer-involved shooting system (under development by the Department) and to prepare drafts of the majority Shooting Review Board report for approval by the Chairman of the Board.

In view of the increased formalization of the process, the Use of Force Review Coordinator will be a highly specialized position. The Coordinator will assist the Review Board Chairman in preparing all relevant material. Factual circumstances and issues will be identified in a summary statement prepared by the Coordinator prior to the Board hearing. It will be the responsibility of the Coordinator to assist the Board in ensuring that all factual questions, as well as matters regarding departmental standards, have been adequately examined during Board review and all issues resolved clearly in the Board's report of its findings and conclusions.

IV.

FINAL EVALUATION OF USE OF FORCE INCIDENTS

The purpose of the final evaluation of use of force incidents has been and will continue to be:

To define policy--and to redefine it in view of experience presented by individual incidents--so that members of the Department as well as the community understand what is expected in compliance with departmental standards;

To ensure thorough investigations of officer-involved shootings, in-custody deaths and substantial injury situations, so that all material evidence is gathered and presented in a fully reliable manner;

To assure a fair and comprehensive evaluation of each officer-involved incident resulting in death or substantial injury based upon review of all relevant factual circumstances, as well as pertinent Department policies and procedures; and

To assume complete responsibility for the results of the use of force review process and for the communication of these results to the community in a manner which merits public credibility and confidence.

Under the City Charter, executive responsibility in officer-involved shooting matters, as in other matters, is shared by the Chief of Police and the Board of Police Commissioners, with ultimate legal responsibility vested in the Commission which is the head of the Department.⁶

⁶The administration of internal discipline in the Department pursuant to Los Angeles City Charter Article XII Section 202 requires separate analysis. The official description of "The Functions and Responsibilities of the Police Commission" describes the disciplinary system as follows:

"The Board of Police Commissioners does NOT have the authority to remove a police officer. Article XIX, Section 202(1) of the Los Angeles City Charter provides that an officer may only be removed by a Board of Rights. However, Section 202 is NOT a limitation upon the power of the Board of Police Commissioners, Perez v. Board of Police Commissioners 78 C.A.2d 638, 646 (1947). In addition, the Board has the right to review the action taken by the Chief of Police pursuant to Section 202. (Article XIX, Section 202 of the Los Angeles City Charter)."

A. Present Procedure

In the present operation of the shooting review process, the Shooting Review Board Report, containing the Board's recommendations, is transmitted to the Director (Assistant Chief), Office of Special Services, who makes the final administrative determination with respect to an incident. Generally, the Chief of Police participates formally in the process only in those cases which involve imposition of a disciplinary penalty. The Police Commission's present exercise of its responsibilities in this area is even more limited. The Commission becomes involved formally only in isolated cases and then usually under circumstances of widespread public discussion. Even in those cases, the Commission's participation has been unstructured and unsatisfactory when measured against its Charter responsibilities.

There are several consequences of the shooting review process that are traceable to the present lack of a defined and continuous participation in it by the Department's executive authorities.

First, the Police Commission has not, on a systematic basis, examined Department standards and practices in what must be viewed as the most critical of Department activities. This has resulted in an important omission in the Department's policy formulation and review process.

A second consequence has been unchanneled participation of the Commission in the review process. Under the present system, neither the Chief of Police nor the Police Commission renders formal findings concerning an officer-involved shooting. The lack of any defined framework for executive consideration of a shooting must and does result on some occasions in unproductive analysis and dialogue in the aftermath of a shooting incident. The chief consequence is that the results of the shooting review process in difficult cases may not be communicated by the Chief of Police or the Police Commission in a manner which engenders confidence in either members of the public or the Department.

B. Future Procedure

The system we are adopting provides for a more responsible role for the Commission in the use of force review process. It provides for direct participation in the decision-making process by the Commission as well as the regular monitoring of that process. The result is consistent with the responsibility and authority vested in the Commission by the City Charter.

In the future, in all shooting incidents and other cases resulting in death or serious injury the procedure will be as follows:

1. The Chairman of the Use of Force Review Board shall forward a report, containing proposed findings and recommendations, to the Office of the Chief of Police, with a copy to the Commission.

2. When the Chief of Police receives the Report from the Use of Force Review Board, he shall:

- (1) Adopt, reject or modify the proposed findings and recommendations contained in the report; and within a specified period,

- (2) Submit his proposed Use of Force Review Report to the Commission. The report will set forth his proposed findings and recommendations in a form suitable for distribution to the public, subject to the deletion of any

confidential material. (The recommendations will cover the individual incident under review as well as proposed changes in Department standards and-practices.)

3. When the Commission receives a proposed Use of Force Review Report from the Chief of Police, it shall either:

(1) Adopt, with or without modification, the findings and recommendations contained in the proposed Use of Force Review Report in which case such report will become final and will be released to the public, less any confidential material;⁷ or

(2) Conduct an independent Commission review of the incident following which the Commission will adopt a Report of Use of Force Incident containing the findings and recommendations of the Commission, which Report will be final and will be released to the public, less any confidential material; and then

⁷The Commission may also refer the matter back to the Chief of Police for further investigation and further report and following receipt of such further report may take appropriate action under paragraphs (1) and (2).

(3) Transmit the matter to the Chief of Police for appropriate action, consistent with the Board's findings and recommendations, which action shall be reviewable by the Commission.

4. In the event that the Commission conducts an independent review of the incident it may:

(1) Conduct an investigation of the matter by the full Commission in executive session; or

(2) Authorize one or more Commissioners to conduct the investigation in executive session; or

(3) Refer the matter to a Special Hearing Officer designated by the Commission⁸

In the above proceedings the Commission may require testimony under oath and may direct preparation of a transcript.

⁸The Commission would in this case designate an individual as Special Hearing Officer from a panel consisting of former superior court judges.

5. In the event that the full Commission conducts an independent review of an incident or authorizes one or more Commissioners to do so, it may:

(1) Employ Special Commission Counsel (through the Office of the City Attorney) and such investigative staff as is necessary;

(2) Examine in executive session the officer(s) as well as any witnesses to the incident, and any Department personnel possessing information which may aid in the evaluation of the incident.⁹

(3) Conduct any further investigation or take such other action as may be required; and

The Commission will then prepare and submit to the public its Report of Use of Force Incident.

⁹The language of this provision is drawn from Special Order No. 43 assigning a similar authority to the Shooting Review Board. With respect to securing the testimony of persons outside the Department, the Commission, when necessary, will exercise subpoena powers vested in it by City Charter Article VI, Section 89.

6. In the event that the Commission designates a Special Hearing Officer that Officer will:

(1) Supervise such investigative staff as has been retained or assigned by the Commission for the purpose of its review;

(2) Examine in executive session the officer(s) as well as any witnesses to the incident and any Department personnel possessing information which may aid in the evaluation of the incident;

(3) Conduct any further investigation or take such other action as may be required; and

(4) The Hearing Officer will then prepare and submit to the Commission, a proposed Report of Use of Force Incident containing proposed findings and recommendations.

The Commission will then adopt or reject or modify the proposed Report of Use of Force Incident and submit its Report to the public.

Proper administration of the disciplinary system is key to any department's successful implementation of its policies. The procedure established in our City Charter for the Police Department, described earlier in our Report, provides a complex system of checks and balances involving the Board of Rights, the Chief of Police, and the Police Commission. There have been suggestions for changes in the Charter which would substantially increase the Commission's authority in general, and would significantly increase its ability

to affect disciplinary decisions. For example a blue ribbon Charter Revision Commission appointed by Mayor Sam Yorty and funded by the City Council proposed in 1969 that the Chief of Police be removed from Civil Service protection and serve at the pleasure of the Commission. The Charter Revision Commission further suggested that the Police Commission become directly involved in the disciplinary process by serving as the final appeals body in disciplinary cases. We do not find it necessary at this time to consider any such changes either in the basic Charter relationship between the Commission and the Chief of Police or in the disciplinary process. We believe, rather, that there is room within the existing system, through the institution of improved procedures such as those set forth in this Report, for the correction of any imbalances which may exist.

With respect to the disciplinary system, the new procedures we are adopting for review of officer-involved shootings and other death and serious injury cases, necessarily require that no final decisions be made regarding the imposition of discipline until the Commission has had an opportunity to adopt a Use of Force Review Report or issue its Report of Use of Force Incident. In all cases in which the conclusions contained in a report might justify the imposition of discipline, the Chief of Police will report his intended action to the Commission prior to implementing his decision. We believe this procedure will result in a more efficient

and consistent disciplinary process and will at the same time permit fuller consideration of essential issues prior to the time initial disciplinary decisions are made in cases where the basic public interest is involved.

STAFFING REQUIREMENTS

The Commission recognizes that if it is to assume the responsibility for the final evaluation of officer-involved shootings and other incidents, it will require additional staff both on a permanent and a temporary basis. The Commission in some cases may need to retain either Special Counsel or a Special Hearing Officer, as well as highly qualified independent professional personnel. These positions would be filled on as needed basis only. Aside from these temporary appointments, the Commission will require two additional full-time permanent staff members, accountable solely to the Commission.

The first of these two positions will be filled by a qualified civilian whose responsibility will include the screening of all shootings and cases resulting in death or serious injury, as well as all serious allegations of police misconduct. This staff member will also be responsible for reviewing all reports to ensure that proper investigative and adjudicative procedures are followed.

The second position will be filled by an analyst who will be responsible for assisting the Board in modifying and developing policy for the Department.

In the opinion of the Commission, the expertise and autonomy required in these two positions mandate that they be independent of the Department and Civil Service and hired directly by the Commission on personal services contracts.

Pursuant to the report and resolution adopted by the City Council on July 6, 1979, the Commission staff shall have full and complete access to all Department resources and will be responsible to the Commission in a manner which is fully consistent with confidentiality.

The Board is requesting the City Attorney, the City Administrative Officer and the Personnel Department to advise it in this regard. When the additional staff is hired the Commission will reorganize its staff, civilian and sworn, so that the additional staff may be secured at little or no increased cost to the City.

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